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JAMES M. ROBERTSON			NORDMEYER, PATRICIA L	
ROBERTSON & MULLINAX, LLC			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/762,781

Filing Date: February 13, 2001

Appellant(s): SUNDQUIST, EVAN

James M. Robertson
For Appellant

EXAMINER'S ANSWER

MAILED
APR 19 2005
GROUP 1700

This is in response to the appeal brief filed February 24, 2005 appealing from the Office action
mailed August 25, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

U.S. Patent No. 3,784,998 to Jones, Sr., patented on January 15, 1974.

U.S. Patent No. 6,189,189 to Morin et al., patented on February 20, 2001.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones, Sr. (USPN 3,784,998).

Claims 1, 2, 4, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morin et al. (USPN 6,189,189).

(10) Response to Argument

A. Obviousness Over Jones Sr.

Appellants argue that there is no reason as to why one would make the proposed modification to remove the handle and slits from Jones. Sr. since this would also removed the applicator leaves made from stacked layers. Appellants further argue that removal of the handle would be highly undesirable, as it would force the user to grasp the body of the applicator.

In response to Appellants' arguments that there is no reason as to why one would make the proposed modification to removed the handle and slits from Jones, Sr. since this would also removed the applicator leaves made from stacked layers, Jones, Sr. does disclose a wiper made from sheet material (Column 2, lines 15 – 16 and Figure 2, #18) having six contiguous edges of equal length; however there are slits formed in the handle and through the thickness of the pad (Column 2, lines 18 – 23). One of ordinary skill in the art would recognize that the handle of the applicator is an unnecessary addition and through the removal of the handle, both money and time would be saved. It would have also been obvious to one of ordinary skill in the art at the time the applicant's invention was made that the wiper of Jones, Sr. is a structural equivalent to the claimed wiper, and performs same function, removal of particles.

In response to Appellants' arguments that that removal of the handle would be highly undesirable as it would force the user to grasp the body of the applicator, the prior art article, the six-sided sheet wiper, is a structural equivalent of the corresponding article disclosed in the specification, the hexagonal shape wiper. That is, the prior art element performs the function, the ability to apply or removal of material, specified in the specification in substantially the same manner as function is performed by the corresponding element, the wiper, described in the specification. MPEP 2183.

B. Obviousness Over Morin et al.

Appellants argue that the prior art must suggest the desirability and thus the obviousness of making the required alteration, and Morin's statement that any geometric shape may be used

represents the application of an impermissible “obvious to try” standard. Appellants further argue that the use of the claimed hexagonal shape has a particulate reducing benefits can be obtained while still retaining the ability to avoid fabric waste and can only be obtained through the impermissible “obvious to try” standard or by hindsight reconstruction using the teachings of the present application as a guide.

In response to Appellants’ argument that the statement of Morin et al. with regard to any geometric shape may be used represents the application of an impermissible “obvious to try” standard or by hindsight reconstruction using the teachings of the present application as a guide, Morin et al. clearly states that any geometric shape may be used for the wipes (Column 3, lines 55 – 56), even though square shape is preferred by Morin. It would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the wiper to have six edges. One skilled in the art would have been motivated to do so in order to have a geometrical shape that appealed to the user in the absence of unforeseen results. One of ordinary skill in the art would also have recognized the gained advantages by the hexagonal shape, shorter perimeter edges while having a greater interior surface area which leads to less contamination, since one of ordinary skill could use known general geometry formulas to compare the surface areas to the edge perimeter; thereby, giving one of ordinary skill in the art the ability to determine the optimum shape to get a greater surface area with less contamination from particulate matter, be it a hexagon or square. Where the unexpected properties of a claimed invention, less particulate contamination from the hexagonal shape, are not shown to have significance equal to or greater than expected properties, the evidence of the unexpected properties, less particulate

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contamination from the hexagonal shape, may not be sufficient to rebut the evidence of obviousness. *In re Nolan*, 553 F.2d 1261, 1267, 193 USPQ 641, 645 (CCPA 1977). While Morin may prefer the shape of the square, one of ordinary skill in the art would recognize the benefits of the hexagonal shape through these simple geometric calculations.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Conferees:

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